

**STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION**

**Brett and Kimberly Foerster
4288 McCormick Drive
Linden, Michigan 48451**

**WRD40107
File Number: 11-25-0042-V**

CONSENT AGREEMENT

This Consent Agreement (Agreement) is entered into by and between Mr. Brett and Ms. Kimberly Foerster (Mr. and Mrs. Foerster) and the, Michigan Department of Environmental Quality (Department), Water Resources Division (WRD), and shall become effective on the date this Agreement is signed by Mr. and Mrs. Foerster and the WRD (Effective Date). All times for performance of activities under this Agreement shall be calculated from the Effective Date.

RECITALS

By correspondence dated March 13, 2012, the WRD issued Violation Notice (Notice) pursuant to Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, to Mr. and Mrs. Brett Foerster. The WRD alleged within the Notice that Mr. and Mrs. Foerster conducted unauthorized activities within regulated wetland on property known as 4288 McCormick Drive, Linden, Parcel Number 06-21-602-074, located within Fenton Township, T5N, R6E, Section 21 Genesee County, Michigan (Property);

The WRD requested within the Notice (DEQ Complaint File 11-25-0042-V) a written response describing the nature of the alleged unauthorized activities. Mr. and Mrs. Foerster responded to the Notice with a March 28, 2012, letter transmitted by an April 3, 2012, e-mail.

Mr. and Mrs. Foerster stated in the March 29, 2012, response that a retaining wall had been constructed at the perceived wetland boundary for the purpose of preventing sedimentation to existing wetland areas.

Mr. and Mrs. Foerster owned or had control of the Property and performed the alleged unauthorized activities without a permit under Part 303;

Mr. and Mrs. Foerster and the WRD acknowledge that prior to construction of the existing retaining wall on the Property, there existed approximately 0.18 acre of wetlands regulated (Regulated Wetland) by the State of Michigan under Part 303. However, considering the practicality of restoration at this location, the potential for additional resource damage resulting from the removal of the retaining wall, and the fact that the lot had been significantly disturbed prior to purchase by sedimentation associated with soil erosion resulting from adjacent road construction during the development of Phase II of Liberty Shores Condominium, restoration of the wetland will not be required. A map depicting the unauthorized wetland impact area to remain and the existing wetland boundary is attached as Exhibit A.

The WRD and Mr. and Mrs. Foerster desire to resolve this dispute without the necessity of additional administrative and/or judicial proceedings; and

This Agreement identifies the necessary actions to be taken by Mr. and Mrs. Foerster and the WRD, and imposes certain conditions upon performance of these actions. Successful completion of the terms of this Agreement will, in the opinion of the WRD, meet the statutory provisions of Part 303, and thereby resolve those allegations set forth in the Notice.

GENERAL PROVISIONS

1. **PROPERTY ACCESS:** WRD staff shall have access to the Property to inspect and determine compliance with this Agreement. The WRD shall provide a minimum of a 24-hour advance notice to Mr. and Mrs. Foerster prior to inspection of the Property.
2. **SETTLEMENT PENALTY PAYMENT:** Mr. and Mrs. Foerster agree to pay an administrative settlement amount of three thousand dollars (\$3,000.00) to the general fund of the State of Michigan. These funds shall be paid within thirty (30) calendar days of the effective date of this Agreement. Payment is to be made by certified or cashier's check payable to the "State of Michigan." To insure proper credit, the payment made pursuant to this Agreement must include Payment Identification: WRD40107. This payment shall be sent to:

Accounting Services Division
Cashiers Office for DEQ
P.O. Box 30657
Lansing, Michigan 48909-8157

3. **STIPULATED PENALTIES:** Mr. and Mrs. Foerster shall pay stipulated penalties of One hundred Dollars (\$100.00) per day for failure to comply with the provisions of Paragraph 2 of this Agreement. Mr. and Mrs. Foerster upon receipt of a notice of any violation governed by this provision, shall have a ten (10)-day right to cure the violation before the imposition of any penalty under this provision.
4. **STIPULATED PENALTY PAYMENT:** To insure timely payments of any stipulated penalties provided in Paragraph 3 of this Agreement, Mr. and Mrs. Foerster shall pay an interest penalty to the State of Michigan for failure to make a timely payment. This interest penalty shall be based upon a rate of 12 percent per year compounded annually, using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally paid in full. All payments associated with this Paragraph 4 shall be paid in the form of a certified or cashier's check payable to the "State of Michigan", and sent to:

Accounting Services Division
Cashiers Office for DEQ
P.O. Box 30657
Lansing, Michigan 48909-8157

5. **PENALTY PAYMENT DISPUTE:** Mr. and Mrs. Foerster agree not to contest the legal basis for the penalty assessed pursuant to Paragraph 2 of this Agreement. Mr. and Mrs. Foerster also agree not to contest the legal basis for any stipulated fines assessed pursuant to Paragraph 3 of this Agreement, but reserve the right to dispute in a court of competent jurisdiction the factual basis upon which a demand by the WRD of stipulated fines is made.

Mr. and Mrs. Foerster and the WRD agree this does not preclude the possibility of informal resolution of disputed issues directly between Mr. and Mrs. Foerster and the WRD.

6. **RESOLUTION OF WRD VIOLATION NOTICE**: As part of the successful completion of the terms of this Agreement, the WRD shall deem resolved the March 13, 2012, Notice and close WRD complaint number 11-25-0042-V.
7. **OTHER PERMIT REQUIREMENTS**: With respect to the Property, Mr. and Mrs. Foerster shall not conduct any activity within regulated wetlands except as provided by this Agreement, or as authorized by separate permit issued by the WRD. This Agreement does not obviate the need to acquire additional state, local, or federal permits as may be required by law.
8. **FORCE MAJEURE**: Mr. and Mrs. Foerster shall perform the requirements of this Agreement within the time limits established herein, unless performance is prevented or delayed by events, which constitute a "Force Majeure" event. For the purpose of this Agreement, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of, Mr. and Mrs. Foerster, such as an "Act of God," untimely review of permit applications or submissions by the WRD or other applicable authority; and acts or omissions of third parties that could not have been avoided or overcome by Mr. and Mrs. Foerster's due diligence, and that delay the performance of an obligation under this Agreement. "Force Majeure" does not include, among other things, unanticipated or increased costs, failure to secure funding, change in financial circumstances, or failure to obtain a permit or license as a result of Mr. and Mrs. Foerster's actions or omissions.
9. **FORCE MAJEURE NOTICE**: Mr. and Mrs. Foerster shall notify the WRD by telephone within 48 hours of discovering any event which causes delay in their compliance with any provision of this Agreement. Verbal notice shall be followed by written notice within ten (10) calendar days, and shall describe in detail the anticipated length of delay, the precise cause of the delay, the measures taken by Mr. and Mrs. Foerster to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Failure of Mr. and Mrs. Foerster to comply with the notice requirements above shall render the "Force Majeure" exemption void and of no effect as to the particular incident involved.
10. **ASSIGNMENT OF RIGHTS**: This Agreement shall be binding on the parties, their officers, servants, and employees. In the event that Mr. and Mrs. Foerster sell or transfer any interest in this Property, Mr. and Mrs. Foerster shall retain the obligation to perform any uncompleted work required by this Agreement and shall retain a sufficient interest in the Property necessary for Mr. and Mrs. Foerster to complete the work required by this Agreement.
11. **AGREEMENT AMENDMENTS**: This Agreement may be amended or revoked at any time by a written agreement executed by all parties to this Agreement. No change or modification to the Agreement shall be valid unless in writing and signed by all parties to this Agreement.
12. **DISPUTE RESOLUTION**: Both Parties agree to diligently and in good faith pursue informal negotiations to resolve any disputes arising out of this Agreement prior to resorting to judicial enforcement. Such negotiations shall proceed in a timely manner.
13. **DENIAL OF LIABILITY**: Nothing contained in this Agreement shall be construed as an admission of liability or wrong doing by Mr. and Mrs. Foerster. The WRD and Mr. and Mrs. Foerster agree that the signing of this Agreement is for settlement purposes only.

14. **AGREEMENT PROVISIONS:** The invalidity or unenforceability of any particular portion of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if invalid or unenforceable provisions were omitted.
15. **GOVERNING LAW:** This Agreement shall be executed and delivered in the State of Michigan and shall be governed by and construed and enforced in accordance with the laws of the State of Michigan.
16. **TERMINATION OF AGREEMENT:** This Agreement may remain in full force for an unspecified time period contingent upon successful completion of all requirements of this Agreement. This Agreement shall terminate only upon written notice of termination issued by the WRD chief. Prior to issuance of a written notice of termination, Mr. and Mrs. Foerster shall submit a request consisting of a written certification that Mr. and Mrs. Foerster have fully complied with all requirements of this Agreement and has made all payments including stipulated penalties required by this Agreement.
17. **ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement among the parties hereto and contains all of the agreements among said parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto make and execute this Agreement on the date first

above written. The undersigned certify they are fully authorized by the party they represent, to enter into this Agreement and to legally bind that party to this Agreement.

Brett Foerster,

By: Brett Foerster

Date: 9/15/15

Kimberly Foerster,

By: Kimberly Foerster

Date: 9-15-15

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION**

By: William Creal
William Creal, Chief
Water Resources Division

Date: 9-23-2015

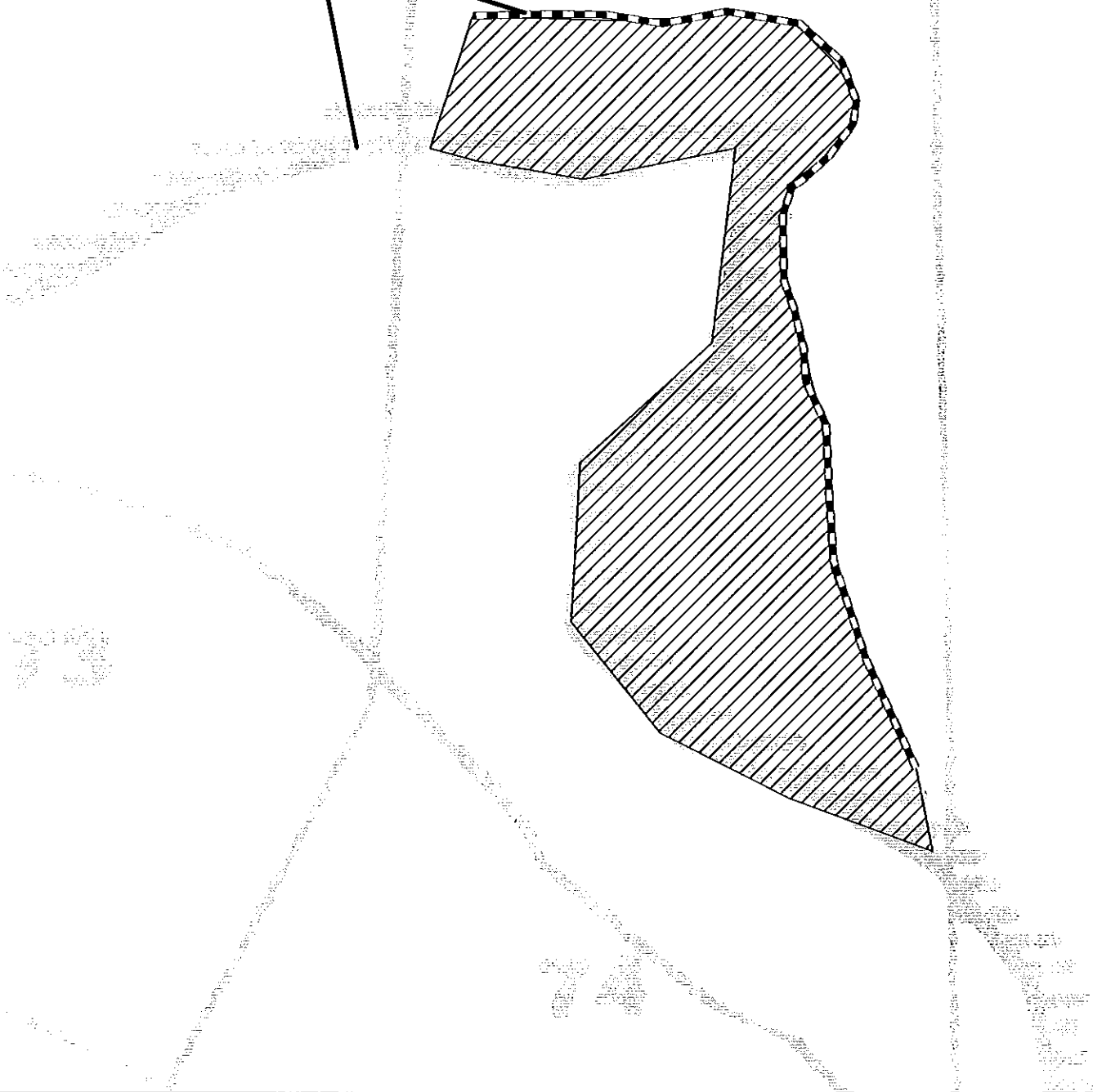
APPROVED AS TO FORM:

By: Brian J. Negele
Brian J. Negele
Assistant Attorney General
Environment, Natural Resources and
Agriculture Division
Department of Attorney General

Date: 09-22-2015

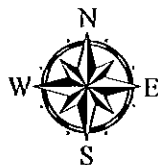
Exhibit A

Wetland Boundary



Map By: Justin Smith
Date: August 6, 2015

30
Feet



Legend

- Existing Retaining Wall
- Wetland Impact to Remain (0.18 Acre)